

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE: BLUE CROSS BLUE SHIELD CASE NO.: 2:13-cv-20000-RDP
ANTITRUST LITIGATION MDL 2406

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TELEPHONIC STATUS CONFERENCE

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BEFORE THE HONORABLE R. DAVID PROCTOR, UNITED STATES
DISTRICT JUDGE, at Birmingham, Alabama, on Tuesday, May 19,
2020, commencing at 9:30 a.m.

APPEARANCES (via telephone):

SPECIAL MASTER: Edgar C. Gentle III
Attorney at Law
GENTLE TURNER SEXTON & HARBISON
501 Riverchase Parkway East, Suite 100
Hoover, Alabama 35244

APPEARANCES PER TELEPHONE
ATTENDANCE LIST:

FOR THE PLAINTIFFS: Timothy D. Battin
Eric R. Belin
Thomas Bender
David Boies
Margery S. Bronster
Katherine R. Brown
W. Tucker Brown
Joshua Q. Callister
Nathan M. Cihlar
U. W. Clemon
Charles J. Cooper
Christina D. Crow
Karen R. Dow
Augusta S. Dowd
David J. Guin
Michael D. Hausfeld
Christopher T. Hellums
William A. Isaacson

1 APPEARANCES (via telephone), Continued:

2 FOR THE PLAINTIFFS: Lynn W. Jinks III
Megan Jones
3 Edith M. Kallas
Casey L. Lott
4 Joann Lytle
Mahaley P. McInnes
5 Rebekah Keith McKinney
Wilson Daniel Miles III
6 Mario A. Pacella
Dennis G. Pantazis
7 Myron C. Penn
Leslie Lee Ann Pescia
8 Carl Wesley Pittman
Aaron S. Podhurst
9 Henry C. Quillen
Barry A. Ragsdale
10 Robert B. Roden
Julia Smeds Roth
11 Patrick J. Sheehan
Carmen Snell
12 Tammy McClendon Stokes
Ami Swank
13 Charles M. Thompson
Joe R. Whatley Jr.
14 J. Mark White
David M. Wilkerson
15 Edward Kirk Wood Jr.
Greg Wright

16 FOR THE DEFENDANTS: Carl S. Burkhalter
17 Andrew P. Campbell
Evan Chesler
18 Anna M. Clark
Karin DeMasi
19 E. Desmond Hogan
Mark M. Hogewood
20 Zach Holmstead
Craig A. Hoover
21 John M. Johnson
Don Karl
22 Lauren R. Kennedy
Cavender C. Kimble
23 Daniel E. Laytin
Katie R. Lencioni
24 Patrick McDowell
Michael A. Naranjo
25 Scott Nehs

1 APPEARANCES (via telephone), Continued:

2 FOR THE DEFENDANTS: Elaine Nichenko
 3 Jess Randall Nix
 4 Joshua K. Payne
 5 Gwendolyn C. Payton
 6 Tracy A. Roman
 7 Michael Sansbury
 8 John G. Schmidt Jr.
 9 Kathleen Taylor Sooy
 10 Robert K. Spotswood
 11 Kimberly R. West
 12 Helen E. Witt
 13 David J. Zott

14 ALSO PRESENT: David Benck
 15 Katherine Harbison Benson
 16 P. John Brady
 17 Warren T. Burns
 18 Don Campbell
 19 Anne Hance
 20 Dan Hofmeister Jr.
 21 Rod Johnston
 22 Cason Kirby
 23 Larry McDevitt
 24 Michael Velezis
 25 Michael Zipfel

Proceedings reported stenographically;
 transcript produced by computer.

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18 (The following proceedings were heard before the Honorable
 19 R. David Proctor, United States District Judge, at
 20 Birmingham, Alabama, on Tuesday, May 19, 2020, commencing
 21 at 9:30 a.m.:)

22 THE COURT: Hey, good morning.

23 COUNSEL IN UNISON: Good morning, Judge.

24 COUNSEL IN UNISON: Good morning, Your Honor.

25 THE COURT: I think we're going to dispense with the

1 roll call.

2 Kecia, are you on?

3 THE CLERK: Yes, sir. I'm here. Good morning.

4 THE COURT: Great. Good morning.

5 Risa, are you on?

6 COURT REPORTER: Yes. I'm here, Judge. Good morning.

7 THE COURT: All right. Thank you all.

8 We are here in In Re: Blue Cross Blue Shield Antitrust
9 Litigation, MDL Number 2406, our Case Number 13-cv-20000.

10 We are again in COVID land, so we are doing our status
11 conference by phone today. We will be Zooming for our breakout
12 sessions in a little while.

13 The first order on our -- business on our agenda, as
14 published by the special master, is status of the case,
15 including the impact of the COVID-19 pandemic and the status of
16 the current stay.

17 Let me hear first from the subscribers on that subject.

18 MR. BOIES: Your Honor, this is David Boies.

19 As we reported last time, we are continuing to work
20 remotely and I think remarkably successfully, actually. Despite
21 the COVID-19 issues, I think that we have, you know, continued
22 to make progress. We still have some significant issues to
23 resolve, but I think that we are managing to deal with the
24 logistics of operating in a remote environment, something that's
25 foreign to all of us, particularly foreign to my age. But

1 I've -- with the help of my wife, I've learned how to Zoom, and
2 we have had some, I think, quite productive sessions.

3 I think with respect to the stay, if the Court agrees,
4 a continuation of the stay would be appropriate.

5 THE COURT: All right. Thank you.

6 How about the providers?

7 MR. WHATLEY: Judge, from the providers' side, we're
8 working remotely. I think we're learning from the experience,
9 and we hope to make more progress working remotely based on what
10 we're learning from the experience.

11 COURT REPORTER: I'm sorry. Who's speaking?

12 THE COURT: Risa, I'm sorry?

13 COURT REPORTER: Who's speaking, please?

14 THE COURT: That was Joe Whatley.

15 MR. WHATLEY: Joe Whatley. I'm sorry.

16 THE COURT: Thank you. Yes. I agree. We're all
17 learning. We may be learning that we don't have to be in person
18 quite as much as we once thought. It's going to be nice to
19 actually get the opportunity to do it again. All right. Thank
20 you, Joe.

21 Next up is the Blues.

22 MR. ZOTT: Your Honor, good morning. It's David Zott
23 for the Association.

24 I think we echo the sentiments of both Mr. Whatley and
25 Mr. Boies. We're fully engaged in a COVID challenge. As the

1 Court knows, it's been a tremendous challenge for our plans as
2 well as for the Association and we know for many providers. I
3 think we've absorbed the initial blow and we're looking now at
4 what's likely to be a -- I'm not sure if it's a new normal or a
5 long twilight struggle. But we know we're going to be in it for
6 a while, and we're prepared to go the distance.

7 In terms of the stay, we also agree that the stay
8 should be continued, and we agree with both what Joe and David
9 said in that regard about the work that we've done and the
10 progress we've made.

11 THE COURT: All right. So how much longer should the
12 stay continue? Should it be -- I don't like the "indefinite"
13 word, but at what point should we revisit the stay? Just
14 monthly, do you think, on each one of these status conferences?

15 MR. BOIES: This is David Boies, Your Honor. I think
16 that's an appropriate way to proceed. I think having a monthly
17 status conference is productive, and I think that that's an
18 appropriate time to consider whether the stay continues to be
19 useful.

20 MR. WHATLEY: Judge, David -- Joe Whatley.

21 David, you knew what I was about to say, but that was
22 the (unintelligible).

23 MR. ZOTT: David Zott. We agree with that as well,
24 Your Honor.

25 THE COURT: All right. Let me make a suggestion that

1 everybody mute your phone unless you are speaking. And I'll
2 give you a few moments to unmute your phone when it's your turn
3 to speak. Because we still getting a little background noise
4 here.

5 Okay. Super. We will continue the stay with the
6 consent of everyone and revisit the stay at the June status
7 conference, which we will discuss preparations and planning for
8 here in a few moments.

9 Next let's get the seal team update.

10 MR. HOGWOOD: Good morning, Judge. It's Mark
11 Hogewood. I hope you're doing well.

12 THE COURT: Thank you.

13 MR. HOGWOOD: Judge, just four quick things for the
14 seal team update. Since the April 16 conference with Your
15 Honor, Judge, we've submitted a couple seal team reports for
16 additional filings to be unsealed. We've completed, I believe,
17 our work on the class cert related filings and have updated
18 those filings on the docket. We've just got a couple
19 outstanding issues that we're working through with Sally.

20 And then on Sally's good idea, we're working on indices
21 for all the standard of review and class cert filings from
22 subscribers, providers, and defendants that will show exhibit
23 number, description of the exhibits, and then the ECF number
24 where it can be found on the -- on the public docket and/or the
25 ECF number for the sealed version, if there is one. Judge, I

1 think that's it on the seal team for now unless Your Honor has
2 any questions.

3 THE COURT: All right. I don't. Thank you for your
4 work. I said before y'all are a shining example of one thing
5 I've done right, if only one thing, during this case.

6 MR. HOGEWOOD: Well, I think it's a good group of
7 folks.

8 THE COURT: Yes. I agree.

9 All right. Next agenda item, other issues, the ol'
10 Catch-22 category. This would be the time, if you feel like you
11 are -- don't have a voice, to speak up through any of the leads.
12 This would be your chance to bring something to my attention.

13 All right. June status conference. Would it be
14 appropriate to just let's follow our usual protocol and let Ed
15 circulate dates and circumstances? I'd say we're going to again
16 be on a combination of telephone and Zoom for June. I think
17 many of you are in areas that are not opening up or not opening
18 up to the point that we could travel, so I think June is going
19 to be much like April and May. We'll be back to virtual
20 meetings.

21 MS. JONES: This is Megan, Judge. Your Honor, that
22 sounds advisable. Yes.

23 MR. ZOTT: This is Davit Zott. We agree as well, Your
24 Honor.

25 THE COURT: Yes.

1 And, Joe and Edith, I take it you agree as well?

2 MR. WHATLEY: That's correct.

3 THE COURT: All right. So I guess we will circulate
4 those dates and the call-in information as we get closer to the
5 end of May, early June.

6 All right. I do appreciate everyone's perseverance
7 through this. It's -- you know, I'm kind of getting tired of
8 people calling it unprecedented times because the use of
9 "unprecedented" is now becoming quite precededented, but
10 nevertheless, it is certainly a challenge none of us saw around
11 the corner in all that you're having to deal with. And I
12 appreciate just the great lawyering before the pandemic and
13 during the pandemic that I -- that we enjoy in this case. And I
14 never want to leave a group call without just commending the
15 lawyers on how they've handled this.

16 MR. BOIES: Thank you, Your Honor. We appreciate that
17 very much.

18 THE COURT: Okay. Well, then we'll start our Zoom
19 conference in about 20 minutes. We'll give everybody a chance
20 to regroup, and we'll start with the subscribers at ten a.m. I
21 think you have the Zoom link, Zoom meeting link. Then we'll go
22 Blues at 10:30 and providers at eleven. And I think each of
23 those groups has the link as well. If you have any issues, text
24 Ed.

25 MR. BOIES: I will have my wife text him.

1 MS. JONES: I would make it -- is that a general
2 admonition, Your Honor?

3 THE COURT: No. It's a -- it's trying to be helpful.
4 And I think -- I think David Boies is underselling his
5 technology -- technological prowess.

6 MR. BOIES: You should talk to my wife and children.

7 THE COURT: Fair enough. Well, you know, that's one of
8 the advantages of working from home; right?

9 MR. BOIES: Exactly. I've told them they are my IT
10 department.

11 THE COURT: That's good. I like that.

12 All right. Thank y'all. We'll pick up with the
13 caucuses in a little under 20 minutes.

14 MR. WHATLEY: Thank you, Your Honor.

15 THE COURT: Take care.

16 (Proceedings concluded at 9:41 a.m.)

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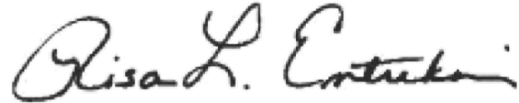
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1 COURT REPORTER'S CERTIFICATE

2 I certify that the foregoing is a correct transcript
3 from the record of proceedings in the above-entitled matter.

4 This 20th day of May, 2020.

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7 Risa L. Entrekin
8 Registered Diplomate Reporter
9 Certified Realtime Reporter
10 Official Court Reporter
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